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LETTER DATED 31 OCTOBER 1995 FROM THE CHARGÉ D'AFFAIRES A.I. OF THE PERMANENT MISSION OF YUGOSLAVIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith the article published in The New York Times on 29 October 1995 and a transcript from British Television Channel 4, testifying to the violations of the Security Council arms embargo against the former Yugoslavia by the Bosnian Muslims and Republic of Croatia respectively.

I should be grateful if you would have the present letter and its annexes circulated as a document of the Security Council.

(Signed) Vladislav JOVANOVIC
Ambassador
Chargé d'affaires a.i.

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Annex I

U.S. Cooling Ties to Croatia After Winking at Its Buildup

By ROGER COHEN

ZAGREB, Croatia, Oct. 26 — On March 24, 1994, Gojko Susak, the Croatian Defense Minister, wrote to the Pentagon appealing for assistance. "Our goal," he wrote, was the peaceful transition of the Croatian military "to one which follows the model of the United States."

The Croatian Army sorely needed help. Hammered by the Serbs in 1991, battered by the Muslim-led Bosnian Army in 1993, its brief history was one of failure. But the United Nations arms embargo imposed in 1991 on the former Yugoslavia made direct military assistance illegal.

Mr. Susak's request was referred to a company called Military Professional Resources Inc., based in Alexandria, Va., and run by a group of retired American officers. "This," said Ed Soyster, a retired lieutenant-general and one the company's vice-presidents, "is the greatest corporate assemblage of military expertise in the world."

Just what has been done with that American expertise, and whether any infringement of the arms embargo may be involved, is not entirely clear. The American generals say they have done no more than teach leadership skills and advise the Croats on the role of an army.

Nonetheless, the Croatian Army, which has also made large clandestine purchases of heavy weapons, mainly in eastern Europe, was quickly transformed into the most effective proven fighting force in the region. And the role of the retired American generals in that transformation has become one element in the increasingly troubled web of relations between the United States and Croatia.

"Croatia became our de facto strategic ally," said a State Depart-

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U.S. Is Now Cooling Its Ties to Croatia,

Continued From Page 1

ment official with intimate knowledge of the workings of the Zagreb embassy. "Arms flowed into Croatia despite the embargo, and this was not an issue. It was never raised. Not once. Now, we're starting to wonder: What have we unleashed in Croatia, and where it is going?"

Several factors have contributed to this new uneasiness about a country that has served until now as the Clinton Administration's pivotal Balkan ally in the search for a balance of power that could open the way to a peace settlement.

To this end, senior officials said, massive Croatian arms imports, in flagrant defiance of the embargo, have been systematically ignored while some of America's top retired generals have been allowed to advise the Croatian Army on modernizing.

Now, however, Croatian human-rights abuses during and since the recapture of the Serbian-held Krajina region in August are troubling the Administration. Apprehension has been growing over Croatian territorial ambitions in Bosnia and over persistent Croatian threats to retake Serbian-held eastern Slavonia.

More generally, an uneasy sense has taken hold among senior officials that America may have allowed itself to get too cozy with a Government whose rhetoric is often laced with thinly veiled racism toward Bosnia's Muslims.

"There are many marriages of convenience in the Balkans, and our relationship with Croatia has been one of them," said a senior Pentagon official. "Let's face it, you can't get to Bosnia without going through Croatia. You need their ports, you need their lines of communication. But right now we're not happy. We see the whole set-up there as overly militaristic."

These concerns have been forcefully conveyed to the Croatian President, Franjo Tudjman, over the last 10 days by the chief American envoy to the Balkans, Richard C. Holbrooke, and by President Clinton himself. Senior officials said the President has raised the threat of economic sanctions against Croatia in the event of an attack on oil-rich eastern Slavonia.

"Let's just say our relationship has entered a cooling-off period," said one senior American diplomat.

But troubling questions remain as the United States tries to recast its relationship with Croatia, especially as the possibility increases that more than 20,000 American peacekeepers will be sent to the region.

They center on whether American advice or intelligence was provided for the campaign in Krajina that resulted in atrocities and the uprooting of more than 170,000 Serbs, how far a tacit alliance with Croatia has gone, and whether an American-led NATO mission to police any settlement is compatible with such close ties to Croatia.

Allowing Croatia to arm itself — it spent an estimated $1 billion on arms in the last year — has been one pillar of America's Balkan policy. The arms, including tanks and M1-24 armored assault helicopters, were acquired mainly in eastern Europe, Croatian officials said.

Croatia became the chief conduit for weapons to the Muslim-led Bosnian Army, but only after taking its cut, about 30 percent of all shipments, Western officials said.

The buildup has been complemented by the efforts of Military Professional Resources Inc., which has been active in Croatia this year.

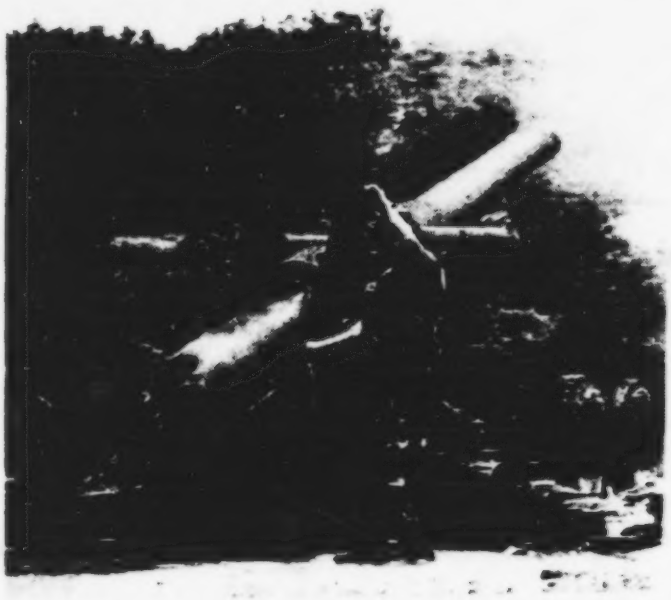
The company occupies one floor of a small, modern building in Alexandria. Conference rooms have names like "the infantry room," where Mr. Soyster greets guests, "the cavalry room," and "the artillery room." A plaque on one wall says: "War is an ugly thing, but not the ugliest of things. The decayed and degraded state of moral and patriotic feeling which thinks that nothing is worth war is much worse."

In order to get a license from the State Department, the company had to undertake not to provide direct military planning or advice on strategy to the Croatian Army. This would violate the arms embargo.

Activities were to be limited to courses on leadership, the training of non-commissioned officers, the place of an army in an emergent democracy, and other subjects unrelated to the obsession of the Croatian Army: the fact that, when the mission began, about 30 percent of Croatia was occupied by Serbs.

"It was kind of frustrating," Mr. Soyster said. "No military plans. No strategy. Those were our constraints."

For this mission, the company de-



A Croatian Army artillery unit bombarded Bosnian Serb positions multipronged attack began in August to recapture the Krajina region of (

Consultants build a professional fighting force.

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After Having Winked at the Buildup

Associated Press

just days before the succesaful Croatia from the Serbs.

ployed some extremely high-powered people, including Gen. Carl E. Vuono, who from 1987 to 1992 was the Army chief of staff, and Gen. Crosbie E. Saint, who from 1988 until 1992 was the commander of the United States Army in Europe.

Some idea of the importance accorded the mission by the Croats can be seen in their attendance at a "leadership skills" course. Every Croatian Government minister turned up, and Mr. Soyster said President Tudjman also appeared.

The force behind the American presence was clearly the Defense Minister, Mr. Susak, a brisk and ruthless man obsessed with remaking the Croatian Army in order to fight the Serbs. He became so confident about the arms buildup that he would joke about it with American officials, a State Department official said. The minister did not respond to a request for an interview.

Gen. Anton Tus, chief military adviser to Mr. Tudjman, said: "We are very satisfied by what the American generals have done for our top-level commanders and some lower levels. General Vuono has been helping us get closer to the standards of NATO. However, it is wrong to believe that he or other American officers have given any specific, operative military instructions for our campaigns."

But the nature of the attack on the Krajina, dubbed "Uluja" or "Storm," has led many Western military analysts to believe that American planning and advice played a role.

The lightning five-pronged offensive, integrating air power, artillery and rapid infantry movements, and relying on speed and intense maneuvers to unhinge Serbian command and control networks, bore many hallmarks of American army doctrine.

An American officer working for United Nations forces called the attack a textbook campaign. He said, "It was carried out on an unsophisticated level, but for me the evidence of American instruction was unmistakable. You don't just stumble on what the Croats have achieved."

Mr. Soyster, who declined to disclose the value of the multi-year contract with the Croatian Government, denied that there had been infringement of the arms embargo. "The guys who run this company ran the American Army, and we are not going to do anything that is against United States policy" he said.

However, a Croatian liaison officer who handled contacts between the two generals and the Croatian army told Roman Majetic, a widely respected journalist in Croatia, that in the five days before the offensive at least 10 meetings were held between General Vuono and senior officers involved in the Krajina campaign. This account could not be independently confirmed.

"According to this officer, there were a series of computer simulations," Mr. Majetic said. "These were not instructions but scenarios. It was pitched at the theoretical level, but it turned out to be true. What General Vuono and General Saint hypothesized was more or less what happened in reality during the Krajina offensive."

General Tus said: "It may be people came to that conclusion because of speed and strategy. I am not saying that these meetings did not take place. I'm just saying that I'm not aware of it. It is true that General Vuono was in the country at that time."

Mr. Soyster confirmed that General Vuono and General Saint were in Zagreb in the days leading up to the Krajina offensive, and they met with Mr. Susak and with the chief of the general staff of the Croatian Army. "But there was absolutely no wargaming," he added. "We were not even aware the attack was about to happen."

But it is clear that the officer class of the Croatian Army, particularly at the non-commissioned level, has gone through a radical transformation guided by retired American officers and that this has helped create the most potent military force in the area. Only four percent of Croatia is now in Serbian hands, and the Croatian Army has taken more than 20 percent of Bosnia.

Having helped in various ways to create this force, the United States is now concerned that it be contained. In the past there have been differences with the Ambassador here asking for a stronger warning against attacking the Krajina than the White House chose to deliver. But now the burning of 70 percent of the Serbian homes in the southern Krajina, the executions of dozens of aged Serbs, and the eviction of thousands more

A de facto ally is now a source of American concern.

have made the Administration as a whole uneasy.

"You'd have to say we gave the green light for the Krajina offensive because our admonitions were at best half-hearted," said Charles Thomas, who retired recently after working on Muslim-Croat federation affairs for the State Department. "But now we're worried by the Croatian military ascendancy. The balance between Muslims and Croats is too weighted to the Croats. It's skewed."

Mr. Soyster said the atrocities during the Krajina offensive were "a major area of concern." But he added that the courses were continuing.

The next target would clearly be eastern Slavonia. Last week Mr. Tudjman said the army would invade if the region were not returned by the end of November.

The Clinton Administration, switching signals, has told the Croats that it is determined to stop any attack. But the American United Nations officer said: "With the money they have spent, and the training they have received, the Croatian Army is one that's going places. It is definitely not an army on the verge of demobilization."

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Annex II

BOSNIAN MUSLIMS CONTINUE TO ARM THEMSELVES, SAYS BRITISH TV

Bosnian Muslims are still secretly arming themselves, despite a United Nations arms ban and the peace process, and with the knowledge and help of the United Nations and the U.S., a British independent television channel said on Friday. A British Channel 4 reporter said he had seen classified reports purporting to show that Muslims in the former Yugoslav Republic of Bosnia and Herzegovina had during the summer acquired military equipment and high-tech weaponry, mainly anti-tank and anti-aircraft systems.

The weapons arrived mostly via Tuzla airport in central Bosnia, which is officially under United Nations control but, according to Channel 4, a part of it is totally controlled by the Muslim Army and closed to United Nations peacekeepers. Muslim troops kept the weapons mostly hidden at home, and some of it was stored at the airport in tents meant for the refugees.

The clandestine arms deliveries were made with the knowledge of the United Nations and Washington, and intelligence reports indicate that the U.S. and NATO were directly involved in them during the summer.

The British Television Channel further said that the secret arms deliveries had begun in February 1995, which had been spoken of in public but that they had been intensified in the past five months.

The Bosnian Serbs, too, knew about the deliveries, which is evident from a report from a meeting between the United Nations Force Commander in Bosnia, British Gen. Rupert Smith, and (Bosnian Serb State) Republika Srpska Army Commander Gen. Ratko Mladic.

U.S. State Department Spokesman Nicholas Burns, speaking for Channel 4, denied the Administration's involvement in the matter, but allowed for the possibility that the Muslims had been secretly buying arms, including U.S.-made equipment on the black market. If a peace accord is reached, the U.S. will very soon unilaterally lift the arms ban (imposed by the United Nations on arms sales to all of former Yugoslavia) and openly arm the Bosnian Muslims, Burns said.

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LETTER DATED 31 OCTOBER 1995 FROM THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On 20 October 1995, a Trial Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, presided over by Judge Claude Jorda, issued a decision concerning Dragan Nikolić. By this decision, the Trial Chamber has, among other things, asked me to bring the matter to the attention of the Security Council in my capacity as President of the Tribunal (see annex III, sect. VI).

An indictment against Nikolić was confirmed by a single Judge of the Tribunal on 4 November 1994. On 7 November 1994, the Government of the Republic of Bosnia and Herzegovina and the Bosnian-Serb administration in Pale were each requested to serve that indictment and a warrant of arrest on Nikolić pursuant to rule 55 of the Tribunal's rules. The Republic of Bosnia and Herzegovina indicated that Nikolić was residing in territory outside their control and therefore it could not carry out the Tribunal's request. The Bosnian-Serb administration in Pale has not responded to the Tribunal's request.

The decision, a copy of which I am enclosing, was reached pursuant to a procedure that comes into application only when a State fails to execute an arrest warrant. This procedure is set out in rule 61 of the Tribunal's rules of procedure and evidence (see annex I). It must be stressed that rule 61 is not a trial in absentia and does not provide for a finding of guilt; instead, it only authorizes a Trial Chamber to determine whether reasonable grounds exist to believe the accused has committed the crimes as charged in the indictment.

The decision found that there were reasonable grounds for believing that Nikolić had committed the crimes with which he has been charged. Further, the decision provided for the issuance of an international warrant for Nikolić's arrest to be transmitted to all States (see annex II). Additionally, the decision invited me, as President of the Tribunal, to inform the Security Council. In this regard, I note that rule 61 (E) provides as follows:

If the Prosecutor satisfies the Trial Chamber that the failure to effect personal service was due in whole or in part to a failure or refusal of a State to cooperate with the Tribunal in accordance with article 29 of the Statute, the Trial Chamber shall so certify, in which event the President shall notify the Security Council.

Article 29 (1) of the Tribunal's statute provides that "States shall cooperate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law". Article 29 (2) provides that "States shall comply without undue delay with ... an order issued by a Trial Chamber, including ... [an order for] the arrest or detention of persons ...".

May I also recall that, in resolution 771 (1992), the Security Council decided, "acting under Chapter VII of the Charter of the United Nations, that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, shall comply with the provisions of the present resolution, failing which the Council will need to take further measures under the Charter". This decision was reiterated in Security Council resolutions 780 (1992) and 808 (1993).

In view of the foregoing, I am now advising you of the decision. I would be grateful if copies of this letter, together with its attachments, could be provided to States members of the Security Council. I am confident that the Security Council will take whatever measures it deems suitable in the light of this clear disregard by the Bosnian-Serb administration in Pale of its obligation to cooperate with this Tribunal. I need hardly note that, for this Tribunal to succeed in its mandate of prosecuting serious violations of international humanitarian law occurring in the former Yugoslavia, all States in the region - including self-proclaimed entities de facto exercising governmental functions - must comply with their legal obligation to cooperate with the Tribunal.

(Signed) Antonio CASSESE
President

Annex I

[Original: English and French]

RULE 61

PROCEDURE IN CASE OF FAILURE TO EXECUTE A WARRANT

(A) If a warrant of arrest has not been executed, and personal service of the indictment has consequently not been effected, and the Prosecutor satisfies the Judge who confirmed the indictment that:

(i) he has taken all reasonable steps to effect personal service, including recourse to the appropriate authorities of the State in whose territory or under whose jurisdiction and control the person to be served resides or was last known to him to be; and

(ii) he has otherwise tried to inform the accused of the existence of the indictment by seeking publication of newspaper advertisements pursuant to Rule 60,

the Judge shall order that the indictment be submitted by the Prosecutor to his Trial Chamber.

(B) Upon obtaining such an order the Prosecutor shall submit the indictment to the Trial Chamber in open court, together with all the evidence that was before the Judge who initially confirmed the indictment. The Prosecutor may also call before the Trial Chamber and examine any witness whose statement has been submitted to the confirming Judge.

(C) If the Trial Chamber is satisfied on that evidence, together with such additional evidence as the Prosecutor may tender, that there are reasonable grounds for believing that the accused has committed all or any of the crimes charged in the indictment, it shall so determine. The Trial Chamber shall have the relevant parts of the indictment read out by the Prosecutor together with an account of the efforts to effect service referred to in Sub-rule (A) above.

(D) The Trial Chamber shall also issue an international arrest warrant in respect of the accused which shall be transmitted to all States.

(E) If the Prosecutor satisfies the Trial Chamber that the failure to effect personal service was due in whole or in part to a failure or refusal of a State to co-operate with the Tribunal in accordance with Article 29 of the Statute, the Trial Chamber shall so certify, in which event the President shall notify the Security Council.

Annex II

[Original: English and French]

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA **Case No. IT-94-2-R61**

IN THE TRIAL CHAMBER

Before: **Judge Jorda, Presiding**
Judge Odio Benito
Judge Riad

Registrar: **Mrs. D. de Sampayo Garrido-Nijgh**

Order of: **20 October 1995**

THE PROSECUTOR

v.

DRAGAN NIKOLIĆ a/k/a "JENKI" NIKOLIĆ

INTERNATIONAL WARRANT OF ARREST AND ORDER FOR SURRENDER

To: All States

THE TRIAL CHAMBER I of the International Criminal Tribunal for the former Yugoslavia

CONSIDERING United Nations Security Council resolution 827 of 25 May 1993 establishing the International Criminal Tribunal for the former Yugoslavia and Rule 61 of its Rules of Procedure and Evidence,

CONSIDERING the indictment submitted by the Prosecutor against Dragan NIKOLIĆ, confirmed by an Order of Judge Odio Benito on 4 November 1994, copies of which are annexed to this warrant of arrest,

CONSIDERING the Decision of the Trial Chamber of 20 October 1995 following the failure to execute the initial warrant of arrest against Dragan NIKOLIĆ, a copy of which is annexed to this warrant of arrest,

HEREBY DIRECTS all States to search for and promptly arrest and transfer to the International Criminal Tribunal for the former Yugoslavia:

name and first name of accused:	Dragan NIKOLIĆ
aliases:	Jenki
date of birth:	1957, at Vlasenica, Socialist Federal Republic of Yugoslavia
family status:	Unknown

/...

last known profession: Electrician - Alpro Aluminium Vlasenica
last known residence: Zarije Sunarica St. - Vlasenica - Republic of Bosnia and Herzegovina

Alleged to have committed at the Sušica camp at Vlasenica during 1992 the following crimes: grave breaches of the fourth Geneva Convention of 12 August 1949
violations of laws and customs of war
crimes against humanity
within the competence of the International Criminal Tribunal for the former Yugoslavia by virtue of Articles 2, 3 and 5 of the Statute,

And to advise the said Dragan NIKOLIĆ, at the time of his arrest, and in a language he understands, of his rights as set forth in Article 21 of the Statute and, *mutatis mutandis*, in Rules 42 and 43 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia which are set out below, and of his right to remain silent, and to caution him that any statements he makes shall be recorded and may be used in evidence. The indictment and the review of the indictment (all documents being annexed to the present warrant) must also be brought to the attention of the accused,

REQUESTS THAT all States, upon the arrest of Dragan NIKOLIĆ, promptly notify the Registrar of the International Criminal Tribunal for the former Yugoslavia, for the purposes of his transfer.

Claude Jorda
Presiding Judge

20 October 1995
The Hague
The Netherlands

Seal of the Tribunal

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Appendix

Article 21

Rights of the accused.

1. All persons shall be equal before the International Tribunal.

2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to article 22 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

   a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

   c) to be tried without undue delay;

   d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

   e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

   f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;

   g) not to be compelled to testify against himself or to confess guilt.

Rule 42

Rights of Suspects during Investigation

A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which he shall be informed by the Prosecutor prior to questioning, in a language he speaks and understands:

(i) the right to be assisted by counsel of his choice or to have legal assistance assigned to him without payment if he does not have sufficient means to pay for it; and

(ii) the right to have the free assistance of an interpreter if he cannot understand or speak the language to be used for questioning.

B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived his right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43

Recording Questioning of Suspects

Whenever the Prosecutor questions a suspect, the questioning shall be tape-recorded or video-recorded, in accordance with the following procedure:

(i) the suspect shall be informed in a language he speaks and understands that the questioning is being tape-recorded or video-recorded;

(ii) in the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before tape-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;

(iii) at the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything he has said, and to add anything he may wish, and the time of conclusion shall be recorded;

(iv) the tape shall then be transcribed and a copy of the transcript supplied to the suspect, together with a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes; and

(v) after a copy has been made, if necessary, of the recorded tape for purposes of transcription, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect.

Annex III

[Original: English and French]

IN THE TRIAL CHAMBER

Before: Judge Jorda, Presiding
Judge Odio Benito
Judge Riad

Registrar: Mrs. Dorothee de Sampayo Garrido-Nijgh

Decision of: 20 October 1995

PROSECUTOR

v.

DRAGAN NIKOLIĆ a.k.a. "JENKI"

REVIEW OF INDICTMENT PURSUANT TO RULE 61
OF THE RULES OF PROCEDURE AND EVIDENCE

The Office of the Prosecutor:

Mr. Grant Niemann
Ms. Teresa McHenry

I. INTRODUCTION

1. By a decision dated 16 May 1995, pursuant to Rule 61 (a) of the Rules of Procedure and Evidence ("the Rules"), Judge Odio Benito ordered that the Prosecutor submit to this Trial Chamber for review the indictment against Dragan Nikolić, alleged to have been, during 1992, the Commander of Sušica Camp located in the region of Vlasenica in Bosnia and Herzegovina. Pursuant to Rules 47 and 55, the same Judge had confirmed the indictment on 4 November 1994 and issued a warrant of arrest which to this day has not been executed.

2. The Chamber had the material which was initially submitted to the confirming Judge, but it has also heard in a public hearing during the week of 9 to 13 October 1995 a number of witnesses and alleged victims. The Chamber is now called on to determine the responsibility of Dragan Nikolić as alleged, that is, to determine if there are reasonable grounds for believing that he has committed all or any of the crimes charged in the indictment and, if so, to issue an international warrant for his arrest.

The execution of an international arrest warrant relies upon the obligation on States to cooperate and to render judicial assistance, as provided in Article 29 of the Statute. In effect, all States in the international community will be bound, if the warrant is issued, to cooperate in searching for and arresting the accused, who would in consequence become an international fugitive.

Moreover, should the Chamber consider that the failure to effect service of the indictment and to execute the original warrant of arrest is attributable to a State or, pursuant to the Rules, to a self-proclaimed entity, it may so certify and it may inform the Security Council through the President of the Tribunal.

3. Before reviewing the crimes allegedly committed by the accused, both as to the facts and the legal characterization of those facts, it is appropriate to assess the scope of Rule 61 in the context of its first application. Recourse to Rule 61 means that the Tribunal, which does not have any direct enforcement powers, is not rendered ineffective by the non-appearance of the accused and can proceed nevertheless.

The review by a panel of Judges, sitting in a public hearing, of an indictment initially confirmed by a single Judge, reinforces both the rights of the accused and enhances the solemnity and gravity of the Judges' decision. The Rule 61 procedure, which is initiated by the Prosecutor, cannot be considered a trial <u>in absentia</u>; it does not culminate in a verdict nor does it deprive the accused of the right to contest in person the charges brought against him before the Tribunal. However, the rights of alleged victims should not be denied; the Rule 61 proceedings provide them with the opportunity to be heard in a public hearing and to become a part of history.

II. THE CRIMES

4. The crimes described hereunder were allegedly perpetrated during 1992 in eastern Bosnia in the municipality of Vlasenica and, for the most part, within the Sušica camp, a former military installation converted by Bosnian Serbs into a detention camp and of which Dragan Nikolić is alleged to have been the commander. The detainees were held in one of two main buildings within the camp, referred to as the hangar.

A. The offences charged

5. The Chamber now examines the evidence which has been tendered in support of the indictment in order to determine whether there are reasonable grounds for believing that the accused has committed all or any of the crimes charged in the indictment.

The indictment against Dragan Nikolić consists of 24 counts. Each count relates to one set of facts for which the Prosecutor has proposed alternative legal characterizations. For the reasons discussed below, each count, with two exceptions, will here be presented under the most appropriate description, that is crimes against humanity.

1. Murder

(a) The murders of Durmo Handžić and Azim Zildžić 1/

6. A number of witness statements, both written and oral, of persons detained in Sušica camp reported the murder of Durmo Handžić and Azim Zildžić. Those testimonies indicate that, allegedly, one evening in June 1992, Dragan Nikolić and some camp guards approached the hangar and called out Durmo Handžić and Azim Zildžić. Shortly after leaving the hangar, these two men were subjected to serious physical assaults for more than 45 minutes by Dragan Nikolić and the guards. They were punched and kicked and struck with truncheons and rifle butts. Some prisoners actually witnessed parts of these assaults and others heard the victims cry out, scream, moan and beg for an end to their torture. Durmo Handžić and Azim Zildžić were then brought back into the hangar. According to the eyewitness testimony of other prisoners, their bodies were covered with bruises and their clothes were soiled and torn. Azim Zildžić had been beaten so violently that his face was unrecognizable and one eye had come out of its socket. He died shortly after having been brought back. Dragan Nikolić ordered his body to be taken away and two prisoners, Hasim and Alija Ferhatović, to bury it.

Dragan Nikolić came into the hangar next morning and approached Durmo Handžić. The latter was suffering intensely from a beating the night before and Dragan Nikolić prohibited prisoners from helping him. Durmo Handžić

1/ See witness statements 7.2; 7.3; 7.4; 7.5; 7.7; 7.8; 7.9; 7.10; 7.13; 7.14; 7.19; 7.35; 7.40; 7.42; 7.47; 7.48.

thereupon begged Dragan Nikolić to kill him to put an end to his suffering. Dragan Nikolić answered that a bullet was worth more than Durmo Handžić's life, that it would be wasted on him and that he should suffer before dying. Durmo Handžić died shortly afterwards. He was buried the same day by Hasim and Alija Ferhatović.

(b) Murder of Mevludin Hatunić 2/

7. Mevludin Hatunić, his wife and daughter were interned in the Sušica camp in early July 1992. Mevludin Hatunić reportedly offered his home to a Serb guard in return for his family's release. He was authorized to accompany the guard to his house for that purpose and then returned to the camp. This was between 3 and 7 July 1992. That same evening, Dragan Nikolić announced to the camp prisoners that, after having handed over his home, Mevludin Hatunić had made a comment to the effect that he would be waiting for a chance to get even. Dragan Nikolić then struck Mevludin Hatunić. The following morning, Dragan Nikolić again beat him until he lost consciousness. Later, Dragan Nikolić returned, saw that Mevludin Hatunić had regained consciousness, and beat him savagely for the third time. Mevludin Hatunić died from his injuries. His body was put in a plastic bag by one of the Ferhatović brothers and removed from the hangar.

(c) Murders of Rašid Ferhatbegović, Dževad Šarić, Muharem Kolarević and Ibrahim Zekić 3/

8. According to a number of witnesses, one night, probably that of 23 to 24 June 1992, Rašid Ferhatbegović, Dževad Šarić, Muharem Kolarević and Ibrahim Zekić were taken from the detainees' hangar by several guards including Goran Tešić. Some detainees saw Dragan Nikolić follow the prisoners out and heard his voice. Dževad Šarić and Muharem Kolarević were the first to be taken out. The hangar doors were closed again immediately. For about 30 minutes, the detainees heard screams of pain. Thereafter they heard gunshots, following which Goran Tešić asked Hasim and Alija Ferhatović to come out. The latter saw the bodies of Muharem Kolarević and Dževad Šarić, which seemed to have bullet wounds in the chest. Dragan Nikolić then ordered the Ferhatović brothers to put the bodies on a stretcher and take them behind a warehouse, where they could not be seen from the camp entrance. They then came to where Dragan Nikolić, Goran Tešić, another guard named Djuro, and Dragan Nikolić's brother were sitting with others. Goran Tešić told them: "Hold on a minute, you're going to get another".

9. Goran Tešić ordered Alija Ferhatović to go and get Ibrahim Zekić. Goran Tešić had him sit down on a metal chair and questioned him. Goran Tešić then asked another guard to give him his weapon and once he had it, shot Ibrahim Zekić twice, who fell from the chair. Goran Tešić thereupon ordered the Ferhatović brothers to take Ibrahim Zekić away. When they returned to where

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2/ See witness statements 7.6; 7.16; 7.34; 7.41.

3/ See witness statements 7.2; 7.3; 7.4; 7.6; 7.8; 7.9; 7.10; 7.12; 7.13; 7.14; 7.19; 7.35; 7.39; 7.40; 7.42; 7.43.

they had left the bodies of Muharem Kolarević and Dževad Šarić, Muharem Kolarević's body was no longer there. They brought this to the attention of Goran Tešić. The prisoners who were in the hangar heard the guards yell: "Call the police, they're escaping". The police arrived some 15 minutes later and entered the hangar accompanied, according to some detainees, by Dragan Nikolić and Goran Tešić. When Rašid Ferhatbegović looked up, one of the police officers pointed at him and asked him if he was the one who had escaped. Goran Tešić replied: "Yes". Rašid Ferhatbegović was taken outside and the prisoners then heard a gunshot.

Towards 5 a.m., Dragan Nikolić came into the hangar and called Hasim and Alija Ferhatović. They went over to the toilets where they found the body of Muharem Kolarević. He was slumped over a barbed wire fence. Traces of blood led from where his body had been left the night before. Even though he seemed to be dead, Goran Tešić fired another bullet into the body. Hasim and Alija Ferhatović carried the body to where they had left the other bodies the previous evening. There they found Rašid Ferhatbegović's body, with a bullet in the middle of the forehead.

Hasim and Alija Ferhatović and Redjo Čakišić buried the bodies of those prisoners on 24 June 1992.

(d) Murder of Ismet Dedić 4/

10. Around 6 July 1992, Dragan Nikolić called Ismet Dedić out of the detainees' hangar. He closed the door and the detainees thereafter heard Ismet Dedić scream. Shortly after, Dragan Nikolić opened the hangar door and ordered two detainees to drag Ismet Dedić inside. The latter was seriously wounded and died a little while later. His body was put in a plastic bag and carried away by other detainees.

2. Inhumane acts

(a) Inhumane acts committed against Galib Musić 5/

11. Dragan Nikolić committed serious physical assaults against Galib Musić in Sušica camp over a seven-day period. It is alleged that Dragan Nikolić:

> "Kicked him and beat him with a metal pipe [...] Musić was beaten to unconsciousness each time. The beatings appeared to become more severe with each day. Shortly before the last beating, Musić regained consciousness and was asking for water. He was not given any water, food, or medical attention during the entire time."

Galib Musić died as a result.

4/ See witness statements 7.6; 7.8; 7.16.

5/ See witness statements 7.6; 7.16; 7.34; 7.41.

(b) Inhumane acts committed against Sead Ambešković 6/

12. Dragan Nikolić and other guards committed physical assaults against Sead Ambešković in Sušica camp using axe handles, iron bars, wooden bats and rifle butts. According to Sead Ambešković's testimony, "as a result of [the] beatings, the back of my head was cut, four teeth on the left side of my mouth were knocked out, and three ribs were broken".

(c) Inhumane acts committed against Redjo Čakišić 7/

13. When he arrived in Sušica camp, Redjo Čakišić was told by Dragan Nikolić and the camp guards: "Look how you ended up by voting for Alija [Izetbegović] and the SDA party". According to his testimony at the hearing, Redjo Čakišić was called out by Dragan Nikolić one night. Dragan Nikolić told two men who were waiting outside: "Here, I brought you something for dinner". The two men beat Redjo Čakišić in the back with rifle butts and kicked him in the stomach as Dragan Nikolić was leaving.

(d) Inhumane acts committed against Hasna Čakišić 8/

14. On three occasions the guards called out Hasna Čakišić for interrogation. According to the record, the 68-year-old victim was slapped and beaten on her hands with a truncheon to force her to reveal the whereabouts of her son. Dragan Nikolić participated in this ill-treatment.

15. Generally speaking, civilians were detained in Sušica camp under inhumane conditions, especially as regards hygiene, health, safety and nutrition. 9/ Included in the approximately 500 civilians were women, children and elderly people. The detainees were crammed into a hangar with practically no ventilation and had to sleep on the concrete floor. They were given only one daily ration of food, and even that was usually spoiled. They were infrequently allowed to use the toilet outside and had to use a single bucket in the hangar for their bodily functions. No medical care was provided. Certain prisoners were specifically appointed to control the hangar. The detainees lived in constant fear for their lives, especially at night.

> "During the night everybody waited for the day to come because day meant going out to work, not seeing what was happening. The maltreatment and suffering was a bit less severe, while the night was the night of horror." 10/

6/ See witness statement 7.3.

7/ See witness statement 7.7.

8/ See witness statement 7.6.

9/ See all statements.

10/ See Transcript of 10 October 1995, p. 37.

Elderly people were not spared this inhumane treatment. As one witness described:

> "She [a woman more than 75-years-old] wanted to go to the toilet, they would not allow her, and then Dragan Nikolić came and said: 'Bind her', so they bound her hands and feet. They tied ropes around her hands and feet so that she could not actually go to the toilet and she had to urinate in the room where we were." 11/

16. In addition to the four victims mentioned above, the indictment alleges that Mevludin Hatunić, Ismet Dedić and Fikret "Čiče" Arnaut were victims of inhumane acts (counts 3.6, 8.6, 11.3). As Dragan Nikolić is also charged with the murder of Mevludin Hatunić and Ismet Dedić, the relevant acts are described under Section II.A.1, Murder. As Dragan Nikolić is also charged with torturing Fikret "Čiče" Arnaut, the relevant acts are described under Section II.A.3, Torture.

3. Torture

(a) Torture of Fikret "Čiče" Arnaut 12/

17. Fikret "Čiče" Arnaut was allegedly assaulted by Dragan Nikolić on numerous occasions. Witnesses related how on one occasion, Dragan Nikolić came into the hangar and, while shouting to the women, "You are not here because of me, but because of him. He wanted to rape my mother and now we will rape you", forced Fikret "Čiče" Arnaut to put his hands behind his back and kneel on the floor, spreading his knees open. Dragan Nikolić kicked Fikret "Čiče" Arnaut in the stomach and lower back. Dragan Nikolić forced Fikret "Čiče" Arnaut to tilt his head back and he put a bayonet into his mouth. Witnesses saw blood on Dragan Nikolić's bayonet. Later, Fikret "Čiče" Arnaut was spitting and vomiting blood. He was heard begging, "Dragan, do not beat me to death, kill me with a bullet", to which Dragan Nikolić answered: "No, a bullet costs 5 DM and you are not worth half a cigarette". Fikret "Čiče" Arnaut was also taken outside and beaten by Dragan Nikolić who was wearing brass knuckles. According to one eyewitness, at some point:

> "Arnaut could no longer get up [...] He was covered with blood on his chest and his face was swollen. It appeared as though many of Arnaut's bones were broken".

11/ See Transcript of 13 October 1995, p. 13.

12/ See witness statements 7.2; 7.14; 7.16; 7.34; 7.40; 7.42; 7.44; 7.50.

(b) Torture of Mubin Musić 13/

18. Mubin Musić was mistreated while he was in Sušica camp. Once, when he was outside the hangar, Dragan Nikolić put a bayonet into his mouth, while constantly insulting and questioning him.

(c) Torture of Suad Mahmutović 14/

19. Suad Mahmutović was allegedly beaten repeatedly by Dragan Nikolić. Several witnesses, including the victim, asserted that during one beating seven of his ribs were broken. Another time, Dragan Nikolić kicked him in the face with his boots and hit him with a baton, gashing open his face. According to the witness:

> "On another occasion, Nikolić walked up to me while I was in the hangar. He told me to open my mouth. He put a cocked pistol in my mouth and told me to admit my neighbor had a weapon. I feared for the safety of others and could not lie. He pulled the trigger. It was then that I learned the gun was not loaded."

It appears to the Chamber that several other victims of inhumane acts or torture committed by Dragan Nikolić in Sušica camp have not been identified as such in the indictment.

4. Imprisonment of civilians

20. According to the written statements as well as the oral testimony presented to the Chamber large numbers of people were detained at Sušica camp during the period 1 June to 30 September 1992. The regular population of the camp is said to have been about 500 persons. The majority of the detainees were men but women and children were also part of that regular population. Over the entire period in question, 8,000 people are said to have been detained at Sušica camp in total. 15/

All the witnesses who testified to having been detained at Sušica camp emphasized that, at the time of their arrest, they had not been participating in a resistance movement against the authorities who had seized power in Vlasenica and who were responsible for the camp. It does not seem that such a movement could have taken shape in the Vlasenica region, where the detainees were locals, during the period in which the camp was operational. The arrests seem to have taken place only after the population had been totally disarmed. Thus it would appear that the establishment of Sušica camp was aimed at detaining a defenceless civilian population which was not organized into a resistance movement.

13/ See witness statement 7.13.

14/ See witness statements 7.3; 7.8; 7.12; 7.14; 7.42; 7.43.

15/ See statement of Mr. Gow.

5. Persecution on religious grounds

21. The imprisonment of civilians under particularly inhumane conditions could, considering the relevant parts of the record, constitute an act of persecution, since it seems to have been motivated solely by a discriminatory intent based principally, if not exclusively, on the religious characterization of the targeted population. It appears from the oral testimony that the camp population was exclusively Muslim.

6. Appropriation of property and plunder

22. Many witnesses have provided evidence of a system of unlawful appropriation or plunder of property at Sušica camp. On arrival at the camp, detainees were forced to hand over items of private property, especially valuable items such as gold or jewellery. Dragan Nikolić is alleged personally to have supervised the confiscation of property from a small building which he used for interrogations.

There is also evidence that, before women were deported from Sušica camp, they had to sign a document stating that they were leaving the area voluntarily and that they were giving up their possessions. 16/

The Chamber considers that there are reasonable grounds for believing that the appropriations were not justified by military necessity and were carried out unlawfully and wantonly.

The Chamber further considers that the acts described above could also be considered as characterizing persecution on religious grounds and so be covered by Article 5 of the Statute.

7. Unlawful transfer of civilians

23. Under the supervision and on the orders of the accused, Dragan Nikolić, a large number of detainees are said to have been unlawfully transferred from Sušica camp to Batković during the summer of 1992. Dragan Nikolić is said to have organized the transfers, calling out detainees from a list of names and telling them that they were to be exchanged for Serbian prisoners. In actual fact, the detainees were transferred to Batković camp; they were forced to travel by bus with their heads down, their hands behind their heads. They were beaten and forced to sing "patriotic Serbian" songs. At Batković camp conditions were similar to those at Sušica camp, if not worse. 17/

As submitted by the Prosecutor, the Chamber considers that Dragan Nikolić may have committed grave breaches of the Geneva Conventions of 1949 - in particular of Convention IV - which fall within the Tribunal's jurisdiction pursuant to Article 2 of the Statute.

16/ See witness statements 7.1; 7.11.

17/ See witness statements 7.3; 7.4; 7.5; 7.12.

The Chamber, however, also considers that the same set of facts could be characterized as deportation and, accordingly, come under Article 5 of the Statute.

B. Type of responsibility arising out of Dragan Nikolić's position at Sušica camp

24. The relevant part of the record provides reasonable grounds for believing that Dragan Nikolić held the position of camp commander at Sušica camp. The witnesses based their conclusions upon an analysis of the distribution of tasks within the camp. The guards were subjugated to Dragan Nikolić's orders; nothing, apparently, could be carried out without his consent. The witnesses also referred to declarations by Dragan Nikolić himself proclaiming his sovereign power within the camp. According to corroborated testimony, he would publicly state, "I am here, the commander, God, the stick and the law". 18/

The indictment and supporting material show that Dragan Nikolić's responsibility for the crimes against identified persons could arise not only from his direct participation in such crimes (Article 7 (1) of the Statute) but also by virtue of his position of authority where the evidence suggests not direct involvement, but a failure to prevent such crimes, as is the case for counts 4, 5, 6, 7 and 18. This latter principle of individual responsibility for omission, long recognized under international criminal law, is reaffirmed by Article 7 (3) of the Statute of the Tribunal which provides:

> "The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."

However, with respect to the counts of the indictment concerning crimes committed against a group of persons (counts 20 to 24), it should be noted that the reference to Article 7 (3) is less pertinent. Dragan Nikolić's position of authority in the Sušica camp makes him responsible not through his subordinates but for his own acts where imprisonment, appropriation, deportation, persecution and inhumane acts related to the very conditions of detention are concerned.

III. APPRAISAL OF THE GENERAL CONTEXT IN WHICH THE CRIMES ARE ALLEGED TO HAVE BEEN COMMITTED

25. The Chamber has noted the alternative presentation in the indictment of the legal characterization of the crimes. On the basis of the relevant parts of the record, the Tribunal's jurisdiction may conceivably be founded on Articles 2 or 3 of the Statute. However, without prejudice to the determination of the Judges at an eventual trial in this matter, the Chamber considers that there are

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18/ See Transcript of 10 October 1995, p. 33.

reasonable grounds for believing that the crimes are more appropriately characterized as crimes against humanity.

A. Evidence which justifies appraisal of the crimes as crimes against humanity

1. The context in which crimes must be committed to be characterized as crimes against humanity

26. Article 5 of the Statute reads:

"The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation;

(e) Imprisonment;

(f) Torture;

(g) Rape;

(h) Persecutions on political, racial and religious grounds;

(i) Other inhumane acts."

This definition specifies the type of crimes which, if committed under certain circumstances, constitutes crimes against humanity and, moreover, describes those circumstances.

The first circumstance referred to in the text is that of armed conflict. It is, in fact, common to Articles 2, 3 and 5 of the Statute, dealt with alternatively or cumulatively in the indictment, which is why it will be addressed below. The Appeals Chamber, thus confirming the findings of the Trial Chamber, considered that by requiring proof of an armed conflict, the Statute had narrowed the customary concept of crimes against humanity (Prosecutor v. Dusko Tadić (Case No. IT-94-1-AR72), Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, at para. 141 (hereinafter Tadić Case and Decision on Appeal)). Since the judgement at Nuremberg, that concept has taken on a certain autonomy as there is no long any need to determine a link with a crime against the peace or a war crime.

The second circumstance, whereby crimes must be "directed against any civilian population" is specific to crimes against humanity. Set forth in broad terms in the Statute, it covers, according to prevailing opinion, three distinct components. First, the crimes must be directed at a civilian population, specifically identified as a group by the perpetrators of those acts. Secondly,

the crimes must, to a certain extent, be organized and systematic. Although they need not be related to a policy established at State level, in the conventional sense of the term, they cannot be the work of isolated individuals alone. Lastly, the crimes, considered as a whole, must be of a certain scale and gravity.

2. In 1992, did Dragan Nikolić through his alleged crimes participate in a systematic policy of a certain scale and gravity directed against a civilian population specifically identified as a group?

27. The evidence produced by the Prosecutor tends to show that in the spring of 1992, there was an authoritarian take-over by the Serbs in the Vlasenica region, which seems to have been largely facilitated by the intervention of elements of the Yugoslav People's Army ("JNA") and, in particular the Novi Sad corps, which at the time, was under the command of the Government in Belgrade. 19/ The eyewitnesses generally confirmed the existence of a new authoritarian power structure in Vlasenica and were unanimous in stating that discriminatory measures were directed against them as early as March and April 1992. Some banks imposed restrictions on accounts held by individuals of the Islamic faith. Laissez-passer were issued to control movement both within and outside the city. A witness said at the hearing:

> "A pass for leaving the Opstina of Vlasenica I never received, but I was given a pass to travel between my house and my land or farm." 20/

Lastly, the population was required to hand in any and all weapons. 21/

It follows from the relevant parts of the record that the civilian population subjected to such discrimination was identified by the perpetrators of the discriminatory measures, principally by its religious characteristics. The testimony is consistent on this point: the Muslim population was specifically, if not exclusively, targeted. The initial discriminatory measures seem to have been followed by still more radical ones: summary arrests, detention and torture at the police station, massive transfers of civilians to Sušica, and then to the Batković camp. On the basis of all the testimony, in September 1992 there remained only a few traces of the Muslim population of the Opstina of Vlasenica which, according to the 1991 census (the last census prior to the said events), amounted to 55.3 per cent of the total population.

The implementation of that discriminatory policy, commonly referred to as "ethnic cleansing", over the region of Vlasenica alone seems to have been so widespread as to fall within the Tribunal's jurisdiction under Article 5.

19/ See transcript of testimony of most witnesses and the statement of Mr. Gow, para. 173.

20/ See Transcript 10 October 1995, p. 9.

21/ See all witness statements.

28. However, the Chamber notes that these serious discriminatory acts do not seem to have been limited to the Vlasenica region. Camps like the one in Sušica were set up in a large part of the territory under Serb control in Bosnia. 22/ This policy of ethnic cleansing covered other parts of Bosnia from the spring of 1992 on. According to the expert witness:

> "The conduct of the spring 1992 attacks, including the manner in which the JNA and paramilitary groups deployed and treated the non-Serb population, was similar throughout Bosnia."

The statement of this witness shows the widespread nature of the criminal acts as well as the fact that they were organized at the highest level. According to the witness:

> "The speed and high level of coordination that these attacks required make clear that they were centrally coordinated and planned." 23/

The witness finished by saying:

> "In conjunction with Serbian political leaders and Serbian irregular units, the JNA conceived, planned, prepared and implemented an armed campaign in Bosnia that involved a systematic use of terror to establish the borders of a new Yugoslavia." 24/

According to all of the witnesses, Dragan Nikolić commanded the Sušica camp at Vlasenica from late May 1992 to late September 1992. On that basis, and in light of all the above, the Chamber considers that there are reasonable grounds for believing that he participated in such a policy and committed crimes against humanity, pursuant to Article 5 of the Statute.

B. The conditions for the application of Articles 2 and 3 of the Statute (grave breaches of the Geneva Conventions/ violations of the laws or customs of war)

1. The existence of an armed conflict

29. In certain cases, a condition for the Tribunal's competence ratione materiae is a state of armed conflict. Accordingly, the Chamber shall examine whether such a conflict existed in Vlasenica at the time that the crimes allegedly were committed.

The Appeals Chamber of the Tribunal in the Tadić Case noted that:

22/ See Transcript 9 October 1995, pp. 99, 100.

23/ See Statement of Mr. Gow, para. 133.

24/ Ibid., conclusion.

"[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized groups or between such groups within a State" (Decision on Appeal, at para. 70).

According to the statement of Mr. Gow, the expert witness, the armed conflicts in the former Yugoslavia began in the summer of 1991 and have continued, without peaceful settlement, to the present day. In this case, witnesses have provided testimony regarding the armed take-over of the town of Vlasenica, by both Bosnian Serbs and the JNA. Thus the Chamber considers that the crimes of which Dragan Nikolić is accused were committed in armed conflict.

2. Specific requirements for the application of Article 2 of the Statute

30. For Article 2 of the Statute, relating to the grave breaches provisions of the Geneva Conventions of 1949, to apply, the victims of the alleged crimes must be "persons ... protected under the provisions of the relevant Geneva Convention".

The Muslim population of Vlasenica was systematically disarmed and it does not appear that there was any resistance movement in the region. The Chamber considers that all the detainees at Sušica camp were civilians and therefore "protected persons" within the meaning of Article 4 of Geneva Convention IV of 1949.

In the Tadić Case, the Appeals Chamber affirmed that the Tribunal has jurisdiction under Article 2 of the Statute only in the context of an international armed conflict (Decision on Appeal, at para. 84). The relevant parts of the record tend to show that JNA forces from Novi Sad, under the control of the Government in Belgrade, took part in the occupation of Vlasenica after the Republic of Bosnia and Herzegovina had been recognized as an independent State.

The evidence of the expert witness, Mr. Gow, suggests, moreover, that the armed conflict in the territory of the former Yugoslavia may be viewed in its entirety as one "major armed conflict", that reportedly began in the autumn of 1991, with its aim "to establish [...] a new [...] State". 25/ This conflict involved several States. This Chamber considers on the basis of all of the foregoing that the armed conflict was international in character and that Article 2 may therefore be applicable.

25/ See Transcript 10 October 1995, p. 86.

3. Specific requirements for the application of Article 3 of the Statute

31. In the Decision on Appeal in the Tadić Case, the Appeals Chamber affirmed that the Tribunal has jurisdiction under Article 3 of the Statute to prosecute as violations of the laws or customs of war:

> "... all violations of international humanitarian law not falling under Article 2 or covered by Articles 4 or 5, more specifically: (i) violations of the Hague law on international conflicts; (ii) infringements of provisions of the Geneva Conventions other than those classified as 'grave breaches' by those Conventions; (iii) violations of common Article 3 and other customary rules on internal conflicts; (iv) violations of agreements binding upon the parties to the conflict, considered qua treaty law ..." (Decision on Appeal, at para. 89).

The indictment against Dragan Nikolić contains 20 charges of violating the laws or customs of war under Article 3 of the Statute. All but one of those charges concern violations of Article 3 common to the four Geneva Conventions. In light of the decision of the Appeals Chamber, and in light of our finding that the detainees at Sušica camp were civilians and therefore "persons taking no active part in the hostilities", the Chamber considers that Article 3 of the Statute may apply in this case. The only charge not coming under common Article 3 of the Geneva Conventions concerns the prohibition on plunder of private property but that is specifically mentioned in Article 3 (e) of the Statute.

IV. INVITATION TO AMEND THE INDICTMENT

32. Based on this review of the indictment and in the light of all the material submitted by the Prosecutor, the Chamber would like to draw the Prosecutor's special attention to two points which it deems to be particularly important.

Having regard to the Rules, it is the prerogative of the Prosecutor, not the Chamber, to amend the indictment (Rule 50). Under these circumstances, the Chamber can only express its belief and invite the Prosecutor to amend the indictment accordingly, should he share such belief.

A. Rape and sexual assault

33. From multiple testimony and the witness statements submitted by the Prosecutor to this Trial Chamber, it appears that women (and girls) were subjected to rape and other forms of sexual assault during their detention at Sušica camp. 26/ Dragan Nikolić and other persons connected with the camp

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26/ See Transcript 10 October 1995, pp. 36, 45, 73; 11 October, pp. 17, 25, 55, 62; 12 October, pp. 5, 17, 18, 55, 56, 83, 107, 108; Statements 7.3 at 8; 7.29 at 4; 7.32 at 3, 4; 7.34 at 4; 7.37 at 3, 4; 7.38 at 2; 7.39 at 2; 7.40 at 5; 7.46 at 3, 4.

are alleged to have been directly involved in some of these rapes or sexual assaults. These allegations do not seem to relate solely to isolated instances.

The Trial Chamber feels that the Prosecutor may be well advised to review these statements carefully with a view to ascertaining whether to charge Dragan Nikolić with rape and other forms of sexual assault, either as a crime against humanity or as grave breaches or war crimes.

Without prejudice to any subsequent decision by the Judges at trial, and having regard to the special provisions on this subject contained in the Rules, the Chamber considers that rape and other forms of sexual assault inflicted on women in circumstances such as those described by the witnesses, may fall within the definition of torture submitted by the Prosecutor.

B. "Ethnic cleansing" and genocide

34. It emerged on the basis of the record that the policy of discrimination implemented at Vlasenica, of which Dragan Nikolić's acts formed a part, was specifically aimed at "cleansing" the region of its Muslim population.

In this instance, this policy of "ethnic cleansing" took the form of discriminatory acts of extreme seriousness which tend to show its genocidal character. For instance, the Chamber notes the statements by some witnesses which point, among other crimes, to mass murders being committed in the region. 27/

More specifically, the constitutive intent of the crime of genocide may be inferred from the very gravity of those discriminatory acts.

That intent, according to some of the eyewitnesses at the hearing, was expressed by the accused himself. Dragan Nikolić reportedly said, "You Muslims never existed, you [...] will never exist, I will eradicate you, I will cut your throats, I will butcher you all". 28/

The Chamber considers that the Tribunal may possibly have jurisdiction in this case under Article 4 of the Statute. It would therefore invite the Prosecutor to pursue his investigations, if feasible and advisable, with a view to indicting Dragan Nikolić for complicity in genocide or acts of genocide.

V. ATTEMPTS TO SERVE THE INDICTMENT

35. The Chamber notes the efforts by the Prosecutor to effect service of the indictment and the subsequent warrants of arrest.

27/ See Transcript 11 October 1995, pp. 87, 97; 12 October, pp. 45, 60.

28/ See Transcript 11 October 1995, p. 55.

On 4 November 1994, the day the indictment against Dragan Nikolić was confirmed, two warrants for his arrest were issued, one addressed to the Republic of Bosnia and Herzegovina, the other addressed to the Bosnian Serb administration in Pale in accordance with Rules 2 (A) and 55.

On 7 November 1994, the Registrar of the Tribunal forwarded the warrant addressed to the Republic of Bosnia and Herzegovina to the relevant authorities in Sarajevo. On 15 November 1994, the Registrar received official notification that the Republic of Bosnia and Herzegovina was unable to execute the arrest warrant due to the fact that Dragan Nikolić resides in the town of Vlasenica, which was stated to be "temporary occupied territory controlled by aggressors".

On 17 November 1994, the warrant addressed to the Bosnian Serb authorities was physically handed by an official of the Tribunal to members of the Bosnian Serb administration in Pale, including Mr. Koljević, the declared vice-president of the Bosnian Serb administration.

On 2 March 1995, the Prosecutor sought to advertise the indictment in newspapers having wide circulation in the territory, as provided for in Rule 60. Accordingly, on 13 March 1995, the Registrar forwarded to the Republic of Bosnia and Herzegovina a request for publication. A similar request was also forwarded the same day to the Bosnian Serb administration in Pale.

An article announcing the indictment against Dragan Nikolić was published in the newspaper Oslobodenie, the largest daily newspaper circulating in the Republic of Bosnia and Herzegovina on 8 April 1995. In addition, details of the indictment were broadcast repeatedly on Radio and Television of Bosnia and Herzegovina on 7 April 1995.

There has been no response from the Bosnian Serb administration concerning its willingness or ability to execute the warrant of arrest issued against Dragan Nikolić.

VI. DISPOSITION

36. FOR THE FOREGOING REASONS and

Pursuant to Rule 61 of the Rules of Procedure and Evidence,

Pursuant to the confirmation of the indictment by Judge Odio Benito dated 4 November 1994,

Pursuant to the decision of 16 May 1995 by which the same Judge ordered the Prosecutor to submit the case to the Trial Chamber,

And following the hearings of 9 to 13 October 1995 held at the seat of this Tribunal,

THE TRIAL CHAMBER UNANIMOUSLY:

DETERMINES that there are reasonable grounds for believing that Dragan Nikolić committed the offences with which he is charged in the indictment issued against him by the Prosecutor dated 1 November 1994,

CONFIRMS therefore this entire indictment comprised of 24 counts as described above,

ISSUES an international arrest warrant against Dragan Nikolić and STATES that such warrant shall be transmitted to all States,

TAKES FORMAL NOTE of the efforts by the Prosecutor to effect service of the indictment and STATEs that the failure to effect service is due wholly to the failure or refusal of the Bosnian Serb administration in Pale to cooperate.

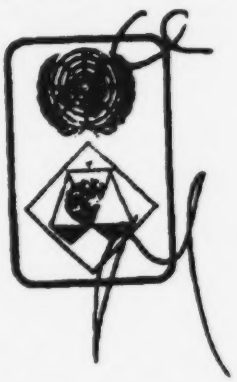
CERTIFIES this failure and INVITES the President of the Tribunal to notify the Security Council of the United Nations accordingly.

[Signed]

Claude JORDA
Presiding Judge

Dated this twentieth day of October 1995
The Hague
The Netherlands

[Seal of the Tribunal]



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REPORT OF THE SECRETARY-GENERAL ON THE WORK OF THE ORGANIZATION

COMPREHENSIVE REVIEW OF THE WHOLE QUESTION OF PEACE-KEEPING OPERATIONS IN ALL THEIR ASPECTS

Improving preparedness for conflict prevention and peace-keeping in Africa

Report of the Secretary-General

I. INTRODUCTION

1. In "An Agenda for Peace" (A/47/277-S/24111), I drew attention to the untapped potential of regional organizations in the maintenance of international peace and security and in the "Supplement to An Agenda for Peace" (A/50/60-S/1995/1), I stressed the importance of helping regional organizations develop a capacity for preventive action, peacemaking and, where appropriate, peace-keeping. The Security Council, in a statement issued by its President on 22 February 1995 (S/PRST/1995/9), encouraged me to consider ways and means of improving practical cooperation and coordination between the United Nations and regional organizations and arrangements and drew particular attention to the needs of the Organization of African Unity (OAU).

2. In its report of 22 June 1995 (A/50/230), the Special Committee on Peace-keeping Operations welcomed the efforts of certain Member States to elaborate concrete proposals for improving the capacity to respond rapidly and effectively to emergency situations in Africa, in particular through cooperation with OAU. These proposals included matters such as training, the identification of equipment needs, and planning of the logistical resources necessary for the deployment of conflict prevention and peace-keeping personnel. The Committee invited me to develop these proposals for consideration by the General Assembly.

3. The present report is submitted in response to these requests from the Security Council and the Special Committee.

4. The founders of the United Nations, in Chapter VIII of the Charter of the United Nations, envisaged an important role for regional organizations in the maintenance of international peace and security. It is increasingly apparent that the United Nations cannot address every potential and actual conflict troubling the world. Regional or subregional organizations sometimes have a comparative advantage in taking a lead role in the prevention and settlement of conflicts and to assist the United Nations in containing them. In this connection, the increase of United Nations activities in the area of peace and security in Africa has been marked by a parallel increase in the activities of OAU and subregional arrangements. The establishment of the OAU Mechanism on Conflict Prevention, Management and Resolution in June 1993 was an important step forward in strengthening African capacity in preventive diplomacy, peacemaking and, where possible, peace-keeping. These efforts, however, have been severely constrained by a lack of resources. Recent initiatives on the part of the United Nations, OAU and subregional arrangements, as well as by States outside the region, have been geared towards addressing these constraints with the aim of strengthening African capacity to respond to crisis situations.

5. These initiatives are a positive development. Yet in order to have maximum effect, they must be developed and coordinated within an overall framework. The present report, which was prepared in consultation with OAU officials, is a first step towards this end. In this connection, the initiatives and recommendations outlined herein are relatively modest. They focus mainly on building a strong foundation necessary to support more ambitious initiatives which can be undertaken at a later stage.

II. PREVENTIVE DIPLOMACY, PEACEMAKING, AND PEACE-BUILDING

6. OAU and subregional arrangements in Africa have taken an active interest in examining possibilities for regional measures of collective security. During its sixty-second ordinary session, held at Addis Ababa from 21 to 23 June 1995, the OAU Council of Ministers reiterated the primary role of the United Nations in maintaining world peace and security. Yet it noted that, while preventive diplomacy should always remain the priority, Africa should seriously endeavour to develop and enhance its capacity to participate in the field of peace-keeping, either under the aegis of the United Nations or, in exceptional circumstances, that of OAU.

7. In its 22 June report (A/50/230), the Special Committee on Peace-keeping Operations reaffirmed the important role that regional organizations and arrangements could play in contributing to the maintenance of international peace and security. It encouraged the strengthening of cooperation between the United Nations and regional organizations, in accordance with Chapter VIII of the Charter and with their respective mandates, scope and composition, in order to enhance the capability of the international community to respond rapidly to disputes and conflicts.

8. The United Nations and OAU cooperate in a number of areas in conflict prevention, management and resolution. The two organizations now consult regularly on key African questions with a view to coordinating initiatives and actions on a broad spectrum of political issues, including the prevention and

resolution of conflicts in Africa. Since 1990, the United Nations and OAU have cooperated on initiatives to prevent, manage or resolve, conflicts in many parts of Africa, including Angola, Burundi, Lesotho, Liberia, Mozambique, Rwanda, Sierra Leone, Somalia, South Africa and Western Sahara. Yet, there is a need to strengthen further mechanisms for coordination, consultation and cooperation in the respective headquarters as well as in the field. The establishment of the OAU Mechanism makes it possible to move towards a more systematic framework of cooperation. The OAU Secretary-General and I have discussed the need to build closer ties between the organizations, with a view to enhancing our mutual capacity for the maintenance of peace and security and coordinating our efforts in this regard.

9. The degree to which the United Nations and OAU are now simultaneously involved in complementary efforts to prevent, manage or resolve conflicts now warrants the posting of a United Nations liaison officer at OAU headquarters. This would go a long way towards facilitating an efficient use of resources and the coordination of efforts in some of Africa's most delicate and challenging situations. In addition, subject to availability of the necessary resources, the two organizations have agreed to establish a staff exchange programme to assist OAU to strengthen its Mechanism on Conflict Prevention and Management and Resolution and reinforce collaboration between the two organizations, both at Headquarters and at the field level.

10. The OAU Mechanism is in the process of upgrading its automated information capability and is now developing a database to assist with early warning. Subject to funding, it is proposed that the United Nations assist in organizing an OAU situation room to receive and disseminate information, to stay abreast of political developments in Africa and to monitor ongoing efforts to prevent, manage and resolve conflicts. This would involve initially a short-term visit by a small technical team from United Nations Headquarters, followed by ongoing staff exchanges between the two organizations. Consideration could also be given to the possibility of the United Nations and OAU using national media, particularly radio programmes, to disseminate information on current efforts by the two organizations to prevent and resolve certain conflicts.

11. Regional organizations have traditionally been active in preventive diplomacy and peacemaking. Where the United Nations and one or more regional organizations have cooperated in dealing with a particular dispute, the forms of such cooperation have varied, ranging from consultation and coordination to the appointment of a joint representative. In other cases, ad hoc groups of States have supported the efforts of the United Nations or taken the lead themselves in peacemaking. Preventive diplomacy and peacemaking are fields of activity in which regional organizations are often well placed to achieve results and where a measure of devolution to the regional level would seem to be most appropriate.

12. The key to closer cooperation and coordination between the United Nations and OAU in preventive diplomacy lies in a structured and constant exchange of information on emerging crises at a sufficiently early stage. Consideration could be given to joint reviews of potential and existing conflicts with a view to coordinating initiatives and actions. To facilitate this process, effort would need to be made to mobilize the financial and technical assistance

necessary to build the institutional capacity of the OAU secretariat in these areas and to further strengthen the Mechanism.

13. The two organizations could explore possibilities for engaging in regular joint peacemaking activities in Africa, especially through OAU involvement with, and participation in, United Nations initiatives. Successful peacemaking will depend on the capacity for sustained support and assistance. Ideas could be exchanged on how the United Nations could help to mobilize financial and logistic support to specific peacemaking activities of OAU and for the development of training programmes on the settlement of disputes. In certain instances, the United Nations could provide support to OAU to enhance its capacity in a preventive diplomacy or peacemaking mission. Moreover, the two organizations could co-sponsor national and regional seminars to facilitate dialogue among contending groups and parties and to contribute to agreements and arrangements to prevent, control or resolve conflicts.

14. OAU has initiated training in electoral assistance and democratic transition activities which could be strengthened with additional information and support from the United Nations. An important step was taken in this regard when OAU became a member of the Electoral Assistance Information Network established in October 1992, coordinated by the United Nations Electoral Assistance Unit. The United Nations could also make it possible for OAU to benefit from United Nations programmes concerned with good governance, peace-building and participatory democracy.

III. PEACE-KEEPING

15. A number of practical difficulties, including a lack of experienced personnel, insufficient material resources and the slow deployment of troops and equipment, has affected the implementation of peace-keeping mandates, especially in the start-up phases. These difficulties were dramatically underscored in the painfully slow expansion of the United Nations Assistance Mission for Rwanda (UNAMIR). At a time when scores of people were being massacred every day, it took about three months, following the authorization of UNAMIR's expansion under Security Council resolution 918 (1994) of 17 May 1994, to obtain the necessary troops, prepare them for deployment, procure essential equipment, and transport the troops and equipment to the mission area. This delay compromised the operational capabilities of the mission. Any effort to examine means of strengthening capacity for peace-keeping in Africa should, therefore, address these constraints as a priority.

16. It must be recognized, however, that these difficulties are not confined to operations in Africa but affect, in varying degrees, the implementation of all peace-keeping operations. In my report on effective planning, budgeting and management of peace-keeping operations (A/48/945 and Corr.1), dated 25 May 1994, I presented a number of proposals for improving the capacity of the United Nations to prepare for and implement peace-keeping operations. The General Assembly has endorsed many of the suggestions presented in that report and is scheduled to resume its consideration of the matter at its present session. At the same time, additional measures should be considered to enhance the capacity

of individual Member States, as well as regional organizations, to participate in peace-keeping operations.

17. While the role of OAU and the subregional organizations in peace-keeping operations is likely to remain limited, at least for the near future, regional efforts, as foreseen under Chapter VIII of the Charter, can assist in enhancing the capacity of the international community to address conflicts in Africa. Improving preparedness for peace-keeping on the continent should, therefore, be viewed as a cooperative endeavour between the United Nations, OAU and subregional organizations, with a view to optimizing the use of available resources.

A. Personnel and training

1. United Nations stand-by arrangements

18. The most important element in any peace-keeping operation on the ground is trained and adequately equipped personnel. Enhancing the capacity of African States to provide such personnel would be helpful regardless of whether the operations in which they participate are conducted by the United Nations, OAU, a subregional organization or a multinational coalition.

19. The United Nations stand-by arrangements comprise a system of national forces and other capabilities, which Member States maintain at an agreed state of readiness as a possible contribution to a United Nations peace-keeping operation. These arrangements provide a framework within which to register the current peace-keeping capacity of African States and to enhance their preparedness to respond more quickly and effectively when a peace-keeping operation is required. The United Nations is now collecting detailed information on the personnel and equipment available through stand-by arrangements, with a view to enhancing planning and ensuring timely deployment. Subject to the agreement of the countries concerned, it is proposed to share information with OAU, which can play a valuable role in securing, from its Member States, the troops and other resources necessary for a peace-keeping mission. Individual African Governments may also wish to share with OAU and each other the details of their involvement in the United Nations stand-by arrangements.

20. The Stand-by Arrangements Management Team of the Department of Peace-keeping Operations of the Secretariat is currently giving priority to consultations with relevant Governments with a view to increasing the number of African participants and, with regard to the 10 African countries that have already agreed to participate, to obtaining essential information on capabilities and volumetrics, as well as gaps in the area of equipment. In addition, consideration is being given to the possibility of a readiness seminar, which the Stand-by Arrangements Management Team could conduct with OAU and relevant Governments.

21. Once units are identified for stand-by arrangements, it is the responsibility of the contributing countries to maintain them in an agreed state of readiness so that they can be called upon when needed. This involves

training the proposed troops in the background of United Nations peace-keeping, standard procedures and guidelines for action, as well as the use of specialized equipment standard to such missions.

22. Under established policy, the countries participating in peace-keeping operations are expected to provide fully equipped units that are self-sufficient for a period of 60 days following their deployment to a given theatre of operations. However, some contributing countries have had difficulties in ensuring that their troops are deployed with the required equipment. These difficulties create significant deployment delays and undermine the operational capability of peace-keeping operations. In crisis situations, such as Rwanda, this can have tragic consequences. The concept of stand-by arrangements makes it possible to plan for and organize equipment requirements to support troops well in advance of deployment, ensuring that all recommended items are available and ready for timely shipment when needed. In this connection it is my intention, within the framework of the stand-by arrangements, to promote bilateral "partnerships" among nations with complementary strengths, according to which one country would make the necessary troops available, while another would provide the equipment required to meet anticipated shortfalls in specialized and heavy equipment needs. These partnerships would include training in the use and maintenance of the equipment on a bilateral basis.

23. In promoting peace-keeping partnerships, the first step is to know exact equipment needs, as well as the type and quantity of equipment that might be available in addition to (or exclusive of) troop contributions. This is the kind of information that the Stand-by Arrangements Management Team is now eliciting in its discussions with participating Governments. In this way it is establishing a "preparedness database" detailing, for each Member State interested in contributing troops to participate in peace-keeping operations, the specifics of their available troops (numbers, type and configurations) and related equipment holdings, noting any shortfalls. Full advance knowledge of the available resources and outstanding requirements will allow for arrangements to be made to alleviate the shortfalls and thereby better prepare the Organization for future deployments, helping to ensure full self-sufficiency of a new operation in its crucial early stages. While increasing the number of African States participating in the stand-by arrangements is an ongoing process in the short and medium term, I invite those African States that are already participating to cooperate with the Stand-by Arrangements Management Team to compile a complete picture, by the spring of 1996, of specialized and heavy equipment needs.

24. In the meantime, the United Nations is working with Member States to identify means of ensuring that troops have the proper equipment and are trained in its use before deployment. In this connection, some potential troop-contributing countries are visited by United Nations mobile logistics teams, which assist in determining heavy and specialized equipment requirements, before the countries concerned are called upon to provide troops for an operation. This has been a very useful undertaking in the case of the United Nations Angola Verification Mission (UNAVEM III).

25. As a means of overcoming delays in deployment of peace-keeping operations, the possibility has been raised of the United Nations pre-positioning equipment

in Africa for use by African contingents. This would require the United Nations to procure either the estimated equipment or to solicit equipment donations from other Member States; both options carry substantial financial implications for the Organization. I have not as yet received indications that Member States are prepared to undertake, through the United Nations, the up-front costs of equipping the contingents of a peace-keeping operation. Given this, and the fact that the precise equipment needs of potential African troop-contributing countries are still being discerned in ongoing discussions with a number of African Governments regarding their participation in the stand-by arrangements, this issue may be revisited at a later time.

26. Meanwhile, the recent establishment at Brindisi, Italy, of a United Nations Logistics Base has provided a facility for the refurbishment and storage of surplus equipment from closed peace-keeping missions, to be used in support of other operations as the need arises, and from where it can be shipped to virtually any port in Africa within two to three weeks. Most recently, the Brindisi facility has greatly facilitated the establishment of UNAVEM III. However, as the bulk of the equipment at Brindisi is non-military and as such intended for the infrastructure of missions rather than for support of troop contingents, the primary focus for provision of those equipment requirements will continue to be the partnership arrangements described above. Upon the request of these partnerships, consideration could be given, on a case-by-case basis, to storing peace-keeping equipment thus provided at Brindisi on a space-available and at-cost basis.

2. Training

27. While the primary responsibility for the training of troops and officers for peace-keeping operations rests with their national Governments, the United Nations has developed valuable training tools designed to assist Member States and regional institutions in the development of peace-keeping skills. There are a number of training activities that could be pursued, in the context of strengthening the capacity for peace-keeping in Africa, both within and outside the context of stand-by arrangements.

28. The United Nations conducts regional peace-keeping workshops, one of which is scheduled to be held in Egypt in February 1996, with invitations issued to current and potential African troop-contributing nations. This workshop is designed to exchange information and to identify training needs, on the basis of which appropriate training exercises will be organized. It is anticipated that one of the areas to be developed is joint peace-keeping seminars, co-sponsored by national staff colleges and the United Nations, with a view to increasing general knowledge and understanding of peace-keeping for mid-level and senior military and civilian officers. These seminars, based on manuals and guidelines developed by the United Nations, could include command post exercises and related simulations. In these seminars, particular emphasis will be placed on involving African countries that are part of the stand-by arrangements.

29. Units from African countries participating in the stand-by arrangements should be kept in a relative state of preparedness and should be trained to the same standards, use the same operating procedures and be equipped with

compatible communications equipment as specified in the United Nations tables of organization and equipment, provided to all Member States. In this connection, African States could set aside or earmark ready contingents to be given specialized training in peace-keeping operations. It is proposed that, initially, key members of these units, such as staff officers, logisticians, communications officers and commanders, take part in joint peace-keeping exercises at regular intervals. At a later stage, whole units might take part in these exercises, so that they are ready for deployment at short notice and are already accustomed to working together upon arrival in the mission area. As part of the stand-by arrangements, consideration is also being given to creating a pool of general staff officers who would be trained by United Nations training assistance teams for immediate deployment and to quickly set up a force headquarters, once a new peace-keeping operation has been authorized.

30. Various training materials, covering general aspects of peace-keeping, have been developed by the Secretariat and issued to all the permanent missions to the United Nations to assist Member States in preparing civilian police and military personnel, in accordance with agreed common standards, skills, practices and procedures to participate in peace-keeping missions. Some of the key elements include a United Nations military observers course and handbook, a United Nations civilian police course and handbook, a junior ranks handbook, a command and staff college training module and a peace-keeping training manual.

31. The United Nations has recently established training assistance teams, made up of experienced peace-keepers, provided by Member States on an as-needed basis, to assist interested countries and regional institutions to develop training programmes and train national and regional trainers. These teams are also available to train headquarters staff of United Nations peace-keeping operations. To date, such exercises have been held successfully for the headquarters staff of the United Nations peace-keeping operations in Haiti and Angola. During 1996, emphasis will be placed on the selection and preparation of training assistance teams drawn from experienced African peace-keepers. The United Nations is also preparing a training exercise for senior military and civilian officers who could potentially be called upon to serve in peace-keeping operations. These programmes would be of assistance in training African personnel, as well as personnel from other regions, subject to the fulfilment of funding requirements.

32. Several Member States have recently indicated their intention to strengthen and/or establish national or regional training centres in peace-keeping. The United Nations, in coordination with OAU, can support such efforts through assistance to designated staff colleges and regional centres in the evaluation of training needs and the development of training programmes to meet these needs; ensuring that common training standards, including a common terminology, are met; the provision of training material; and assistance in the coordination of external support. The United Nations is prepared to provide experts, or national experts seconded to the United Nations, as well as training assistance teams to assist these efforts. One request for assistance has already been received and is being addressed.

33. It should be noted, in this connection, that some assistance in peace-keeping training is already being provided on a bilateral basis. These efforts

should be coordinated with the training programmes proposed above. Towards this end, the United Nations is collecting information from Member States on the training they are conducting and to which other nations are invited to send candidates. In this context, the United Nations acts as a clearing-house, or central collection point, of information on these activities, in order to assist Member States interested in building peace-keeping capacity or in providing support for such activities. This information will now be shared routinely with OAU in order further to coordinate efforts.

B. Planning and financing

34. Before a peace-keeping operation is authorized, the United Nations generally conducts technical survey missions, during which detailed operational plans, including an assessment of resource requirements, are formulated. As far as possible, senior civilian and military personnel for the proposed operation are identified and appointed at an early stage, so that they can be associated with the planning process. Key personnel, provided by African countries under the United Nations stand-by arrangements, will be included in these technical planning teams for the operations in which they will be participating.

35. Existing mechanisms for financing United Nations peace-keeping operations do not allow for concrete preparatory activities to be undertaken in advance of a mission being authorized by the Security Council. Accordingly, the financial aspects of enhancing preparedness for peace-keeping in Africa must be considered. Certain proposals made in the present report, especially the idea of "partnerships", would take the form of bilateral assistance (some of which is already occurring) and would represent no direct cost to the Organization. However, to be of maximum usefulness to the international community, there is a need to coordinate such activities. The United Nations stand-by arrangements provide a useful framework within which to do this.

36. Most of the proposals in the present report, falling in the broad categories of stand-by arrangements, training and mechanisms for assisting and cooperating more closely with OAU, have direct, albeit modest, budgetary implications for the United Nations. In due course, it may be necessary to institutionalize these activities, which would be reflected by placing them under the regular budget. In the meantime, I invite Members to contribute to a trust fund that would be dedicated to enhancing preparedness for conflict prevention and peace-keeping in Africa.

C. Cooperation with OAU and subregional organizations

37. In regard to building capacity for peace-keeping, there are several avenues, as described throughout the present report, through which the United Nations can assist States members of OAU. Should OAU or a subregional organization decide, with the support of the Security Council, to undertake a peace-keeping operation or to deploy military observers, the United Nations could provide planning and logistic expertise to help prepare the exercise and evaluate the necessary logistic and financial requirements. The United Nations and OAU, or a subregional organization, could also consider co-deployment of

peace-keeping operations, as is currently the case in Liberia. Should such operations be considered, closely coordinated planning would be an essential prerequisite for their success. Moreover, the lessons learned from the Liberian experience clearly show that, unless such operations are established on a firm and reliable financial basis, their effectiveness and credibility can be undermined. The fact that the Economic Community of West African States (ECOWAS) has had to rely on voluntary contributions to meet many of the logistic requirements of its force has undoubtedly been a major obstacle to the discharge of its responsibilities under the peace agreements. This lesson should be taken into account in considering the financial aspects of peace-keeping activities under regional or subregional arrangements.

IV. OBSERVATIONS

38. The key to enhancing preparedness for conflict prevention and peace-keeping in Africa lies first and foremost with the countries of the continent. Member States outside the region can assist, especially if practical solutions and the resources required to implement them are clearly identified. The United Nations stands ready, for its part, to participate in this process.

39. OAU has made significant strides in recent years in building its capacity for the maintenance of peace and security, especially with regard to preventive diplomacy and peacemaking. Given the varied capacities and the differences in the structures, mandates and decision-making processes of OAU and the United Nations, it would not be appropriate to try to establish a rigid model for cooperation between them. Nevertheless, it is possible to identify certain principles on which cooperation should be based, including agreed mechanisms for consultation, respect for the primacy of the United Nations as set out in the Charter, a clearly defined division of labour to avoid overlap, and a coordinated approach by members of OAU and the United Nations in dealing with problems of interest to both organizations.

40. It is also possible, indeed imperative, to continue to strengthen the capabilities of OAU and to institutionalize mechanisms to give practical effect to the principles cited above. Towards that end, I have made the following proposals in this report:

(a) To post a United Nations liaison officer at OAU headquarters to help ensure effective coordination of the efforts of the two organizations in the areas of conflict prevention, management and resolution;

(b) To send a technical team on a short-term visit to assist the OAU Mechanism in organizing a situation room;

(c) To establish a staff exchange programme to assist OAU to strengthen its Mechanism and to reinforce collaboration between the two organizations, both at headquarters and at the field level. This could include, inter alia, bringing OAU planners and logisticians to the United Nations so that they may familiarize themselves with the way in which the Organization plans and fields peace-keeping operations;

(d) To share routinely with OAU information from States Members of the United Nations on the peace-keeping training they are conducting and to which other countries are invited to send candidates.

41. The United Nations will continue to have a central role with regard to peace-keeping in Africa. The region's preparedness for peace-keeping, whether as part of a United Nations, OAU or subregional operation, depends initially on the willingness of African Governments to contribute troops to such an operation. The next step is to identify any gaps in the areas of training and equipment that would impede the ability of these troop contributors to participate effectively. The third is for the international community to assist in meeting those requirements. The stand-by arrangements system provides an appropriate framework for African Governments that are interested in participating in peace-keeping operations to make that known in specific terms, to make known areas in which their capacity must be enhanced if they are to make an optimal contribution to such operations and for those needs to be matched with assistance from those in a position to provide it.

42. Although peace-building is largely a political task, its essential ingredients also include economic and social development, the protection and promotion of human rights, good governance and institution-building. Frequently these activities must accompany peace-keeping if the latter is to be successful and the larger goal of lasting conflict resolution is to be achieved.

43. In the light of the above, I have proposed in the present report a number of modest but practical measures, which can be summarized as follows:

(a) To give priority to strengthening African participation in the United Nations stand-by arrangements and to compile, as soon as possible, a complete picture of the specialized and heavy equipment needs of African participants;

(b) On the basis of this information, to promote bilateral "partnerships" to match troops with equipment;

(c) Subject to the agreement of the States concerned, to share information regarding their participation in the stand-by arrangements with OAU;

(d) To carry out by the end of 1995 a distribution campaign of United Nations peace-keeping training materials and to conduct, early in 1996, a regional peace-keeping training workshop in Africa;

(e) To conduct a peace-keeping training-of-trainers seminar, a United Nations training assistance team seminar and a civilian police training seminar in the first half of 1996;

(f) To begin organizing, at regular intervals, joint peace-keeping exercises for key officers of African contingents participating in stand-by arrangements; and, in the longer term, to be a catalyst for joint peace-keeping exercises for African units participating in stand-by arrangements.

44. In the final analysis, the success of preventive diplomacy, peacemaking, peace-keeping and peace-building in Africa, irrespective of the level of

preparedness and the effectiveness of cooperation between organizations, depends on the political will of the parties in conflict to resolve their differences peacefully. It also depends on the political will of Member States, and, in particular, of the Security Council, to support such operations and ensure that they are provided, from the outset, with the human, material and financial resources necessary for the implementation of their mandates. It is only on this basis that these instruments for conflict resolution and management can be effective in the post cold war era.